



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-63

SUBJECT: DONNA BATH  
COUNTY CLERK/REGISTRAR OF VOTERS  
WHITE PINE COUNTY

**A. JURISDICTION:**

In her capacity as County Clerk/Registrar of Voters and Chief Elections Officer for White Pine County, Donna Bath is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

**B. REPORT OF INVESTIGATIVE ACTIVITIES:**

- Received Request for Opinion with attachments A through I from Stephen Marich, City of Ely Council Member, on December 5, 2005. Reviewed documentation (TAB B)
- Received response with attachments 1 through 4 from Donna Bath on December 19, 2005; received Waiver of Statutory Time requirement on April 19, 2006. Reviewed documentation (TAB C)
- Reviewed duties and responsibilities of county clerks established under NRS 246 as well as duties and responsibilities listed on the Internet website of the White Pine County Clerk's Office (TAB D)
- Reviewed newspaper article, *City Primary Election this Tuesday; Early Voting Ends*, published Friday, April 1, 2005, *Ely Times*, page 2A (TAB E)
- Reviewed letter dated April 6, 2005 from Ms. Bath to the Secretary of State's Office regarding City ordinances related to the 50% plus one "Rule" (TAB F)
- Reviewed Interlocal Agreement between White Pine County and the City of Ely whereby the County Clerk's Office provided June 2005 General Election services to the City at the request of the Secretary of State's Office; letter from County Clerk to City Clerk regarding election services costs; E-mails between Secretary of State's Office and voting systems vendor regarding election materials preparation; election ballot (TAB G)
- Interviewed various witnesses

**C. RECOMMENDATIONS:**

Based on investigative activities, the Executive Director recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(1)

**SPECIFIC REASON:**

There are no allegations or credible evidence of fact that amounts to or supports a violation by this public officer of the provisions of NRS Chapter 281.

**D. SUMMARY OF REQUEST FOR OPINION:**

This Request for Opinion (complaint) was received from Stephen Marich, City of Ely Council Member, on December 5, 2005. The complaint alleges that Ms. Bath violated NRS 281.481(1) by providing unwarranted assistance to George Chachas concerning certain election challenges he made during the November 2002 general and the April 2005 primary mayoral elections for the City of Ely. The complaint alleges that Ms. Bath's involvement in the issues relating to these election contests surpassed her ordinary responsibility as the White Pine County Clerk, and her unwarranted assistance to George Chachas demonstrated that she possessed an impermissible personal bias against incumbent, Robert Miller, in the outcome of the election challenges.

In October 2002 Mr. Chachas filed a challenge. The basis for the challenge was a question of Mr. Miller's residency, and thus his eligibility to vote in the November 2002 election. As it turns out, Mr. Miller did not vote in the election. Ms. Bath's requirement upon receipt of the challenge was to ascertain Mr. Miller's residency pursuant to his voter registration as requested by the challenge, advise Mr. Chachas, and nothing more. However, according to the Request for Opinion, Ms. Bath took issue with the events, and allowed her personal feeling regarding Mr. Miller to control her conduct by providing unwarranted assistance to Mr. Chachas regarding his issues. According to the Request for Opinion, her continued involvement in the second and third challenges in this matter demonstrated her bias in an arena in which she needed to remain impartial.

On April 22, 2003, Attorney Patricia Cafferata filed a "Statement Of Contest, or in alternative, Complaint for Declaratory Judgment" on behalf of Mr. Chachas after Mr. Miller was re-elected mayor for the City of Ely. Mr. Chachas's contest of the outcome of the mayoral race was based on the question of Mr. Miller's residency.

An "Election Contest Hearing" was conducted on April 29, 2003. During cross examination of Ms. Bath by Mr. Richard Sears, White Pine County District Attorney, Ms Bath was asked if she had any personal interest in the case. She stated she had no personal interest; however in a complaint on Mr. Sears filed with the State Bar of Nevada by Ms. Cafferata, Ms. Cafferata identifies Ms. Bath as one of Mr. Miller's chief accusers.

On April 5, 2005 a primary election was conducted for mayor of the City of Ely. Three candidates were on the ballot: the incumbent, Robert Miller; Bruce Carlson; and George Chachas. Mr. Chachas received more than 50% of the votes cast; however, Ely City Code required that the two candidates with the most number of votes in the primary election be

declared nominees for the office at the general election, even if one of them receives more than a majority of votes cast in the primary election. As a result of the issues associated with the Ely mayoral primary election and conflicts with two Ely City Codes and the Nevada Revised Statutes (NRS), the City of Ely sought an attorney general's opinion. The attorney general supported the latter of the two Ely City Codes and NRS requiring the two candidates receiving the most votes to appear on the general election ballot.

On April 11, 2005, at her own initiative, Ms. Bath contacted Ms. Cafferata to obtain *pro bono* legal representation for Mr. Chachas to contest the outcome of the primary election. At that time, Mr. Chachas was in Las Vegas rehabilitating from surgery. Ms. Bath contacted Ms. Cafferata while in her place of employment (White Pine County Clerk's Office) during normal business hours (8:00 a.m. - 5:00 p.m.) and utilized telephones and fax machines at the expense of the taxpayers of White Pine County, to provide information to Ms. Cafferata.

On April 19, 2005, Ms. Cafferata filed a "Statement of Contest" on behalf of Mr. Chachas in the Seventh Judicial District Court. On May 2, 2005, Senior District Judge Joseph Pavlikowski issued an "Order Regarding Statement of Contest" which confirmed the opinion provided by the attorney general's office, and denied Mr. Chachas's contest. On May 3, 2005, Ms. Cafferata filed a "Motion For Stay of Judgment" on Mr. Chachas's behalf. On May 6, 2005, Judge Pavlikowski issued an "Order Regarding Motion for Stay of Judgment", denying the motion for stay of judgment. Ms. Cafferata filed a "Writ of Mandamus or Prohibition" with the Nevada Supreme Court and on May 13, 2005, the Nevada Supreme Court denied the petition.

Examination of Ms. Bath's official county clerk telephone records indicate repeated telephone calls and fax transmissions to Ms. Cafferata beginning on April 11, 2005, and continuing through May 9, 2005.

Ms. Bath, without regard for her statutory requirement, departed from the faithful and impartial discharge of her public duties by contacting Ms. Cafferata to represent Mr. Chachas and interfering in a matter that did not professionally concern or involve her or her office.

Ms. Cafferata met with Ms. Bath in her office on at least two occasions – once by herself and once accompanied by Mr. Chachas.

#### **E. SUMMARY OF SUBJECT'S RESPONSE:**

A response was received from Donna Bath on December 19, 2005. In her response, Ms. Bath denies the allegations set forth in the complaint. She stated that she did not involve herself beyond her professional requirements and did not have a bias toward the outcome, only a professional and ethical obligation to speak up when she sees something is wrong concerning the election process.

Every one of the situations regarding the legal challenges involving the mayor's race have been ongoing for at least the last four and one-half years and have been litigated through the District Courts and the Nevada Supreme Court. The voters of White Pine County elected the current mayor through the legitimate election process.

Ms. Bath stated that she received no personal benefit, gifts, service, favor, employment, engagement, emolument nor economic opportunity what so ever in any of this. The only thing she received personally out of this was a lot of unnecessary stress and headaches in trying to uphold her oath of office regarding the election laws. She stood up professionally for what she knew was right in all three of the Challenges.

Regarding the 2002 and 2003 election Challenges, Ms. Bath provided the following information:

The White Pine County Clerk's Office, for as long as Ms. Bath has been in office (since August 8, 1994), has been asked by the City of Ely, and most recently directed by the Secretary of State's Office, to be involved in and assist with the City elections.

She has been dealing with election related and challenge issues between Mr. Chachas and Mr. Miller since 2002. Mr. Chachas brought in an Official Challenge on Mr. Miller for a "County Election" as to his residency requirements. This Challenge was on Mr. Miller as to where he said he lived vs. where he actually resided. This Challenge was for voting purposes, not for his candidacy requirements.

Mr. Chachas had tried in earlier City elections to challenge and did not follow the proper procedure. Ms. Bath advised Mr. Chachas that she could provide the forms to him, but could not provide assistance or legal advice. It took Mr. Chachas a few tries to get it correct.

In election law, if a citizen is challenged, there is a process that the person has to answer the challenge. It pretty much freezes everything until the matter is resolved. Mr. Miller refused to address the first challenge.

Ms. Bath followed the required procedure by submitting the Challenge to the District Attorney's Office. After receiving several different opinions from both from the District Attorney's office and independent counsel, nothing was resolved on the 2002 Challenge. Mr. Chachas came into Ms. Bath's office on a regular basis to complain about nothing happening regarding the challenge as is required by law under required time frames.

Ms. Bath contacted the Secretary of State's Office for assistance and, after much back and forth between the Secretary of State's Office and district attorney's office, the Secretary of State's Office advised Ms. Bath that they would handle the matter of the first Challenge.

During the time that the Secretary of State's Office was handling the first Challenge, Mr. Chachas filed a second Challenge on Mr. Miller regarding his qualifications as a candidate, in the Spring 2003 City Election.

Around that same time, Mr. Miller came in and wanted to re-register to vote. Ms. Bath explained to him that there was an unresolved Challenge; therefore, she could not take his application. He was always registered, but he had been Challenged. Until the Challenge had been resolved, she couldn't change his records. He was still registered to vote, just Challenged. Ms. Bath couldn't change his status. Mr. Miller was a registered voter in White Pine County and would have been able to vote, providing, he took the affirmation as to where he lived, which he refused to do.

Ms. Bath and the district attorney's office could not agree as to how to handle Mr. Miller's request to register.

The district attorney's office advised the City to allow Mr. Miller to go ahead and vote in the City primary election without taking the required Affirmation. Contrary to Ms. Bath's position on the matter, the district attorney advised the City to hold Mr. Miller's ballot aside and not count it unless there was a tie.

Upon the advise of outside counsel, Ms. Bath has tried to do what is right, and has been met with much resistance. She is frustrated with the whole process and feels that the system has failing the voters. The Clerk/Registrars in the State of Nevada have been charged with implementing Federal and State legislation, encourage voter participation, promote voter confidence, yet when something goes terribly wrong, it's hard to get help.

Ms. Bath's involvement in the second Challenge was limited to providing general election information and forms to parties requesting the information. As Registrar of Voters in White Pine County, she did not change Mr. Miller's information on his voter history because of the first Challenge.

With approval of the County Commission and assistance from Ms. Bath's outside counsel, the Nevada County Clerk and Election Officials joined with Mr. Chachas by filing an Amicus Brief to the Nevada Supreme Court regarding the Challenge filed on the issue of residency. The Supreme Court ruled that Mr. Miller did not meet the residency requirements for his candidacy.

Mr. Miller had to step down as Mayor but was reappointed by the City Council.

Election Officials have to live with the rulings in regards to elections, so they have an interest in seeing that the right thing is done. The rulings affect future elections for the entire State of Nevada.

Regarding the 2005 election Challenge, Ms. Bath provided the following information:

Mr. Miller filed for Mayor in 2005 along with a Mr. Carlson and Mr. Chachas. Mr. Chachas received more than a majority in the Primary and then when the City changed the 51% Rule, he ran again in the General against Mr. Miller and was elected by the voters of the City of Ely.

Because of all of the problems and stress from being involved with the City Elections, and all of the headaches over all of the Challenges, when approached about assisting with the City Elections in 2005, Ms. Bath advised City Clerk Jim Alworth that she didn't want anything to do with the City Elections.

Ultimately, she agreed to assist Mr. Alworth with the City Primary Election, including helping him with the Ballot layout and the tabulation of the City Primary Election. Her Certification and Seal was placed on the City Primary Results. For that reason, she did have a professional interest in seeing that it was correct.

The City announced in the local newspaper in February 2005 and again the Friday prior to the Tuesday City Primary, that pursuant to the 50% plus one "Rule" that had been utilized in the City for many years, if any candidate for the office of Mayor received more than 50%, they would be declared the winner.

The City had changed their Ordinance a few years ago, to accommodate the 50% plus one "Rule", as it had been questioned in years prior. The then Mayor (Miller) had been elected under the 50% plus one "Rule". But now it didn't apply.

Ms. Bath sent a letter to the City Council and the Secretary of State's Office stating her concerns that the election laws have to be applied evenly to everyone if it is expected that the voters will have confidence in the process. How much trust can the public put in a process when the rules change on a whim.

Ms. Bath would have felt the same way, no matter which candidate would have received the 50% plus one "Rule". She took an oath and she is paid to ensure that the citizens in the county get a fair election process.

Regarding her correspondence with Ms. Cafferata, Ms. Bath provided the following information:

Ms. Cafferata has called Ms. Bath's office off and on for at least the last four and one-half years to talk to her in her official capacity regarding the circumstances involving all three of the Challenges. Ms. Cafferata called Ms. Bath as a witness in the Court matter, and they talked about many things involving the Challenges and the City Elections on which Ms. Bath offered her professional opinion. Ms. Bath remembers talking with Ms. Cafferata and Ms. Cafferata mentioning that she may do the case Pro Bono for Mr. Chachas, but Ms. Bath did not contact Ms. Cafferata to obtain Pro Bono representation for Mr. Chachas. Ms. Bath learned that Ms. Cafferata was representing Mr. Chachas Pro Bono from Mr. Chachas's brother. Ms. Cafferata was already Attorney of Record for Mr. Chachas in other matters between Mr. Chachas and Mr. Miller.

Ms. Bath has known Ms. Cafferata since August of 1994 when Ms. Cafferata was the Attorney of Record on a suit and/Recall Petition filed against the district attorney, the entire board of commissioners and Ms. Bath. They have had differences, but since that time, Ms. Bath has worked with Ms. Cafferata in her official capacity of Clerk/ Registrar for White Pine County. None of the conversations she has had with Ms. Cafferata, the correspondence

sent either in writing or by fax have ever benefited Ms. Bath personally and were all performed under her duties as Clerk/Registrar for White Pine County, Nevada. She provided Mrs. Cafferata the same public information and forms she would have and does provide to any one else.

Ms. Bath's office has the Guides to Recalls, Guides to Challenges and all other forms and information related to Election matters, court matters, county commission matters, passports and many other civil forms.

The phone records provided in the complaint shows many fax numbers and phone calls were initiated to Judge Pavlikowski's office, the Nevada Supreme Court (for Judge assignment) and the Nevada Secretary of State's Office at almost the same exact time faxes and phone calls were made to Ms. Cafferata's office. Challenges/Contests regarding election matters are very time specific. Several calls and faxes were made to the Judge, Ms. Cafferata, the Secretary of State's office and the AOC (Supreme Court office) regarding all three challenges.

Ms. Cafferata received the same consideration any attorney from out of town would receive. Ms. Bath faxed, at her request, documents from her file and other files.

Ms. Cafferata was in Ms. Bath's personal office the two times mentioned in the complaint. The first time was prior to the court case in which Ms. Bath was called as a witness in her professional capacity as Clerk/Registrar. Ms. Cafferata was advising Ms. Bath what she would be asked during questioning. The second time was after the Court hearing, both Ms. Cafferata and Mr. Chachas came into Ms. Bath's office to advise her as to what had happened during the hearing, since Ms. Bath didn't stay for the entire hearing.

In response to the complaint Ms. Cafferata filed against Mr. Sears with the Nevada State Bar, the statement that Ms. Bath was one of Millers' chief accusers regarding his lack of residency is a true statement. Ms. Bath had to be in her capacity as Clerk/Registrar. Those duties are set out in Chapter 293 of the Nevada Revised Statutes.

Ms. Bath received numerous phone calls from Mr. Ellick Hsu of the Secretary of State's Office urging her to provide election assistance to the City. After much resistance on her part, a written agreement that she would be involved in their tabulation was reached. At the request of the Secretary of State's Office, she has sincerely put forth her best efforts to ensure that the election process in White Pine County is fair to all concerned.

#### **F. PERTINENT STATUTES AND REGULATIONS:**

**NRS 281.481 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

\* \* \* \* \*

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

\* \* \* \* \*

## **G. RESULTS OF INVESTIGATION:**

### ***Factual History:***

The White Pine County Clerk's Office has provided election support to the City of Ely for several years. During some of this time, challenges have been filed relating to the mayoral elections.

In 2002 Mr. Chachas filed a Challenge regarding Mr. Miller's residency and in 2003 Mr. Chachas filed a Challenge regarding Mr. Miller's qualifications as a candidate. Ms. Bath attempted to obtain a resolution to the residency matter by seeking direction from both the White Pine County District Attorney's Office and the Nevada Secretary of State's Office. The residency matter was not resolved until the Nevada Supreme Court ruled that Mr. Miller did not meet the residency requirements for his candidacy. The Nevada County Clerk and Election Officials filed an Amicus Brief with the Supreme Court on this matter. Mr. Miller stepped down as mayor and was reappointed by the City Council.

In 2005 Ms. Bath was requested by the Secretary of State's Office to provide election support to the City of Ely for its mayoral election. A controversy occurred regarding an interpretation of the 50% plus one "Rule" and two conflicting City of Ely ordinances. One ordinance stated that the candidate with 50% plus one "Rule" or more of the votes is declared the winner of the race, but another ordinance stated that the top two vote-getting candidates would advance to the general election. State law concurs with the second ordinance. A Nevada Attorney General Opinion was sought by the City regarding this matter. The Opinion states that the two candidates receiving the most votes would advance to the general election.

Ms. Cafferata stated that she contacted Ms. Bath and had a conversation with Ms. Bath regarding the outcome of the primary election. She subsequently represented Mr. Chachas in contesting the outcome of the mayoral primary election by filing a series of legal actions; however, the district court confirmed the Opinion and the Nevada Supreme Court denied further petition. Ms. Cafferata stated that it is true that she has represented several individuals on a *pro bono* basis, but that she was not contacted by Ms. Bath to represent Mr. Chachas in this matter.

The two candidates receiving the most votes were advanced to the 2005 general election ballot.

During the interviews of various individuals, it became clear that some perceive Ms. Bath acted as an advocate for one of the candidates while others perceive that she is an advocate for the election law and fairness of the law. Those who have knowledge of the telephone or in-person conversations between Ms. Cafferata or Mr. Chachas and Ms. Bath were not privy to the details of those conversations.



***Allegations regarding NRS 281.481(1):***

NRS 281.481(1) states:

“A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.”

There is no credible evidence that suggests Ms. Bath acted outside of her job duties as the White Pine County Clerk. Ms. Bath appears to have acted in good faith and for the public benefit. There is no evidentiary basis in support of the Commission further investigating the allegations.

**H. CONCLUSION:**

The Executive Director hereby recommends the panel find that no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that Ms. Bath violated NRS 281.481(1). It is further recommended that this complaint be dismissed.

Prepared by: Matt C. DiOrio DATED: August 31, 2006  
MATT C. DI ORIO  
SENIOR INVESTIGATOR

Approved by: Pat Hearn DATED: September 1, 2006  
L. PATRICK HEARN  
EXECUTIVE DIRECTOR